BAIL SLIP

The Appellant/Accused viz. Dasgupta was directed to be released on bail by the order of this court dated 13.7.98 and made in Crl.M.P.No.3249/98 in Crl.A.No.375/98.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-6-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.375 of 1998

Dasgupta .. Appellant/Accused

vs

Inspector of Police
Chengam Circle .. Respondent/Complainant

This criminal appeal is preferred under Sec.374 of the Code of Criminal Procedure against the judgment dated 22.4.1998 of the Additional District Judge cum Chief Judicial Magistrate, Tiruvannamalai, in S.C.No.78 of 1997.

For Appellant : Mr.D.Hari Krishnan
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.S.Jayakumar
Additional Public Prosecutor

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JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The sole accused in a case of murder, who was found guilty as per the charge and awarded a punishment of life imprisonment by the Additional District Court, Tiruvannamalai, has brought forth this appeal challenging the judgment.

2. Originally, a charge was framed under Sec.302 of I.P.C., and subsequently, an additional charge was framed under Sections 354, 376 read with 511 of I.P.C. A revision was preferred by the appellant before this Court in Crl.R.C.No.245/98, and this Court by

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an order, quashed the additional charge under Sections 354, 376 read with 511 of I.P.C. and directed the Court of Sessions to proceed with the trial in respect of the charge of murder. Accordingly, the accused was tried, and the lower Court found him guilty and awarded life imprisonment.

3. The short facts necessary for the disposal of this appeal can be stated thus:

(a) P.W.1 Geetha, was the daughter of P.W.6 Kannan. P.W.2 Parthasarathy was the son of P.W.6. P.W.6 was the native of Periyakolappadi village. P.W.1 was given in marriage to one Kanagaraj of Kannakandhal. Subsequent to the marriage, they went over to Bombay for eking their livelihood. Since the father of the said Kanagaraj met with an accident, they came back to the native place. In view of the family circumstances, P.W.1 used to often go to her parental home at Kannakandhal. P.W.6 leased out a part of his house to the appellant, who was a Leprosy Assistant, attached to the Primary Health Centre there. The accused was having television in his portion. P.W.1 and the family members used to go over there. On those occasions, P.W.1 used to go over there. The appellant/accused developed a desire for her and tried his best on number of occasions. On two or three occasions, he peeped through the window, when she was taking bath. On one occasion, he asked her to prepare rice for him. On another occasion, he just made an attempt to rape her. She did not bring forth the same to the notice of her husband or any family members, since she felt that it was a shameful.

(b) The sister of P.W.1 also visited the house. The appellant/accused was asking them that they can have a trip to Sathanur Dam; but, they flatly refused. Then, the accused was telling them that he was having a sister at Bombay, and he has to purchase clothes for her to be sent to Bombay. So saying, he took Kanagaraj with him to Tiruvannamalai. On the date of occurrence, after going over to Tiruvannamalai near the Gandhi Statue, P.W.9 Kumaresan, who was already known to Kanagaraj, met both of them. He was enquiring Kanagaraj about the visit. He was told that he was proceeding to Sathanur. Kanagaraj was further telling that the person accompanying him, is a Leprosy Doctor at Kannakandhal, and he was a tenant of the house of P.W.6. Then, when they were proceeding in the bus to Sathanur, P.W.3 Venkatesan and P.W.4 Ponmudi, who are the distant relatives to the said Kanagaraj, met them. On enquiry, Kanagaraj was telling that a passenger by his side is the Leprosy Doctor, and both of them were going to Sathanur Dam. After going over to Sathanur, the accused took him to a Hotel and had ice-cream for him. Thereafter, he took Kanagaraj to a rock side and attacked him with a wooden-log, and he sustained injuries. The said Kanagaraj died. Leaving the dead body there, the accused fled away from the scene of occurrence.

(c) When the accused returned home, P.W.1 asked him about her husband. The appellant/accused told the family members that he went to his native place. For a few days, nothing was known. But,

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one of the relatives of the said Kanagaraj on seeing the dead body in the Sathanur Dam, rushed to P.W.2 and informed him. When the accused came to know about the same, P.W.2 accompanied by the accused, went over to the spot, and he was asking P.W.8 Kumar, about the said Kanagaraj. They were informed that the dead body was taken away by the officials of Sathanur Police Station to the Government Hospital. On coming to know about the same, they proceeded to the Hospital, where they identified the body. P.W.10 Thandavamoorthy, a Technical Assistant, attached to the Public Works Department, Sathanur Dam, gave a report under Ex.P1. On information to P.W.21, Balaraman, the Sub Inspector of Police, Sathanur Police Station, the dead body was found. On the strength of Ex.P1, a case under Sec.174 of Cr.P.C. was registered by P.W.21 in Crime No.130/93. Ex.P19, the First Information Report, was despatched to the Court. P.W.22 proceeded to the scene of occurrence, made an inspection in the presence of witnesses and prepared Ex.P5 observation mahazar and Ex.P20 rough sketch. He conducted inquest on the dead body of Kanagaraj in the presence of the witnesses and panchayatdars and prepared Ex.P21 inquest report. A requisition Ex.P3 was sent to the Government Hospital, Chengam, for conduct of postmortem. Then, he recovered M.O.5 bloodstained rock and M.O.6 sample rock under a mahazar. The photographs were taken through P.W.15 Krishnamoorthy, a Photographer. M.O.3 series and M.O.4 series are the photos and negatives respectively.

(d) On receipt of Ex.P3 requisition, P.W.13 Dr.Manimegalai, Woman Assistant Surgeon, attached to the Government Hospital, Chengam, conducted autopsy on the dead body of Kanagaraj and found the following injuries.

"External Injuries:

1. Abdomen:

A well defined incised wound about 5 ½" x 2 ½" x 2 ½" over the middle of right side abdomen and loop of small intestine hanging out.

2. Chest:

Skin depression seen on both sides chest and O/E. Bone crackling felt on the both side chest.

Internal Injuries:

1. Hyoid bone: Basal part of right side greater horn of hyoid bone fractured.

2. Thorax – 4th, 5th, 6th, 7th and 8th ribs of right side chest and 5th, 6th and 7th ribs of left side chest fractured at the midline of the chest.

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3. Anterior part of lower lobe of right lung teared off and the thoracic cavities contain 500 ml of dark colour blood.

4. Abdomen – loop of small intestine hanging out of the abdominal wound."

The Doctor has issued Ex.P3 postmortem certificate, and she has given final opinion to the effect that the deceased would appear to have died of injuries of vital organs of the body with shock and haemorrhage, 3 to 4 days prior to postmortem examination.

(e) All the materials objects were despatched to the Court. The accused met P.W.18 Lakshmanan, who is already known to him and made a confession about the entire occurrence. The admissible part is Ex.P6. P.W.22 Kannan, the Inspector of Police, was the Investigating Officer, before whom the confession was made. Pursuant to the confession, the accused took the Investigating Officer and the witnesses to the rock area at Sathanur Dam, where the occurrence has taken place. He produced M.O.8, a log, M.O.9 a small bottle, M.O.10 a syringe, and M.O.11 series – needle, and all of them were recovered under a mahazar. Then, he brought them to his house, where he produced a knife and other material objects. All were recovered, and they were sent to the Court. The Investigating Officer converted the case into Sec.302 of I.P.C. Ex.P22 express report, was despatched to the Court. The chemical analyst's report along with the other reports Exs.P16 to P18 received from the Forensic Sciences Laboratory, were produced before the Court. On completion of the investigation, the final report was laid by the Investigating Officer.

4. In order to substantiate the charge of murder namely the only charge in respect of which the trial was conducted, the prosecution examined 22 witnesses and relied on 24 exhibits and 19 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he denied as false. No defence witnesses were examined. The trial Judge, after hearing both sides and considering the materials available, found the accused guilty as per the charge levelled against him and awarded the punishment referred to above, which is the subject matter of challenge before this Court.

5. The learned Counsel appearing for the appellant in his sincere attempt of assailing the judgment of the trial Court, made the following submissions. The prosecution had no direct evidence to offer, and it relied on the circumstantial evidence only. The prosecution relied on only the two circumstances. Firstly, the deceased was found in the company of the accused and last seen by P.Ws.3, 4 and 9. Secondly, there was a confessional statement alleged to have been given by the accused, pursuant to which the material objects were recovered. The learned Counsel would add that no acceptable proof was available either, or these circumstances were thoroughly insufficient, and it can be commented that the prosecution was with lack of evidence.

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6. The learned Counsel would further submit that from the evidence of P.Ws.3 and 4, it would be quite clear that they were distantly related to the deceased, and thus, on that ground, they are interested, and their evidence has got to be eschewed. Apart from that, their version in the chief examination is given go by in the cross-examination, in view of the inconsistencies found in their evidence, and thus, no significance could be attached to their evidence. While their evidence are eschewed, what was available for the prosecution is the only confessional statement alleged to have been given by the appellant/accused to P.W.18. According to the prosecution case, it was made even on 30.4.1993 to P.W.18, and the accused has also been identified. Under such circumstances, any amount of confession made subsequently after a period of one week, will be of no avail or legal significance. Likewise, the alleged recovery of the material objects pursuant to the confessional statement could not even be considered for a moment. Hence, the alleged confessional statement and the recovery fall to ground. If to be so, then the prosecution had no case at all. In such circumstances, it is a fit case, where the lower Court should have rejected the case of the prosecution out-right and acquitted him, and hence, these submissions are to be considered by this Court, and the appelant/accused is entitled for an acquittal in the hands of this Court.

7. The Court heard the learned Additional Public Prosecutor on the above contentions.

8. This Court paid its full attention on the submissions made and had a thorough scrutiny of the materials available.

9. At the outset, it has to be pointed out that there is no controversy that the dead body of Kanagaraj was found a few days after the occurrence. The Sub Inspector of Police made an observation of the place of occurrence, conducted the inquest and sent the dead body for postmortem. The postmortem has also been conducted by P.W.13 the Doctor, on the requisition Ex.P2, and he has given a certificate under Ex.P3 along with the final report. It could be seen from the final opinion given by the Doctor, that due to the shock and haemorrhage and the injuries to the vital organs, he died. Neither before the trial Court nor before this Court, the appellant/accused has questioned that Kanagaraj died out of homicidal violence, and thus, it can be safely concluded that Kanagaraj died out of homicidal violence.

10. It is not in dispute that the appellant/accused was a tenant in a part of the house of P.W.6, and P.W.1 was given in marriage to the deceased, and they were for short a while in Bombay and came back to the native place in view of an accident that took place, where the father of the deceased died. They stayed for sometime, and P.W.1 went over to the place where the house of her parents was situate. From the evidence of P.W.1, it would be quite clear that on number of occasions she used to go to the other part of the house, which was being occupied by the appellant, for

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witnessing T.V., and on some of the occasions, he was looking through the window, when she was taking bath, and on one occasion, he made an attempt to outrage her modesty; but, she has not spoken about the same to anybody. The contention of the learned Counsel for the appellant is that had it been true that on number of occasions, it had taken place, was she a passive spectator, and she would have brought to the notice of the parents or her husband; but, she has not done so, and thus, it is thoroughly unbelievable. It is pertinent to point out that the lower Court has pointed out the demeanour of the witness. The witness has also added that revealing all these things and adumbrating the same would be nothing but shameful to the family, and hence, she kept quiet. Therefore, this Court is unable to agree with the contention put forth by the learned Counsel for the appellant.

11. In the instant case, on the day of occurrence, there is evidence to show that P.W.1 was with her husband Kanagaraj, since deceased, in the house of P.W.6. It was the accused, who took the deceased to Tiruvannamalai stating that he was to purchase some clothes for her sister who is residing at Bombay, and he has to send them through the said Kanagaraj and P.W.1. Thus, it would be clear that it was the appellant/accused, who took the deceased on the day of occurrence from the house of P.W.6. At Tiruvannamalai, the deceased and the appellant were found together by P.W.9. The evidence of P.W.9 would categorically go to show that he found both of them near the Gandhi Statue at Tiruvannamalai, and when enquired about the other person, it was the deceased, who informed that the accused was a Leprosy Doctor, who was occupying a part of the house of his father-in-law, and thus, he was introduced. The evidence would further go to show that the deceased also informed P.W.9 that he was going to Sathanur. It remains to be stated that while both the deceased and the appellant were travelling in the same bus, P.Ws.3 and 4 have witnessed them, and they made enquiry to both of them, when the deceased told them that the accused was the Leprosy Doctor, and both of them were going together to Sathanur. Thus, it would be quite evident that it was the accused who has not only taken the deceased to Thiruvannamalai, but also from Tiruvannamalai to Sathanur, and he was the last person in the company of the deceased.

12. The contention put forth by the learned Counsel for the appellant before the lower Court that proper identification parade should have been conducted, since the identity of the accused was doubtful, was rightly rejected by the lower Court for reasons therefor. There was an occasion, where P.W.9, to whom the appellant was introduced by the deceased, made enquiry about the accused, and the deceased informed him that he was the Leprosy Doctor; and that he was also occupying the part of the house of P.W.6. The evidence would go to show that the deceased was telling P.Ws.3 and 4, while they were travelling in the same bus, that the accused was the Leprosy Doctor, and thus, the witnesses came to know about the appellant/accused, and they have also identified the accused in Court. Despite full cross-examination of P.Ws.3, 4 and 9, the appellant was unable to make out anything to shake their

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evidence, and thus, the lower Court has rightly relied on their evidence that it was the accused who took the deceased to Tiruvannamalai, and then, he returned home alone in that evening, and when the family members of the deceased, in particular P.W.1, asked the appellant as to what happened to her husband, he told that the deceased went over to his native place. P.W.1 believed the words of the appellant/accused; but, for a few days, he did not return, and instead, a message reached that a dead body was found at Sathanur Dam. Thus, it would be quite clear that the appellant/accused, who took him to Sathanur, has returned back; but, he had no explanation to offer what happened to the person, who accompanied him.

13. Apart from the above, the main circumstance would be the subsequent conduct of the appellant/accused, where the accused took P.W.2 to Sathanur Dam and asked about the dead body, and it was P.W.8, who informed him that the dead body was taken to the Government Hospital, Chengam, This would be indicative of the fact that it was the appellant/accused who took P.W.2 to the place where the dead body was found. The narration of the facts and the conduct of the accused even prior to the commission of the offence, for a period of one month, would go to show that he made all attempts to satisfy his quench for sexual intercourse with P.W.1, to which she was not amenable. At this juncture, it is pertinent to mention the commentary of Shakespeare i.e., "The love at the first sight and the lust at the first thought will have inevitable consequences." The later part of the saying of this commentator, namely "the lust at the first thought", has brought forth the inevitable consequence of the appellant in murdering the other man.

14. The prosecution relied upon the alleged confession made by the accused to P.W.18. As rightly pointed out by the learned Counsel for the appellant, there was an occasion for the accused even to be identified earlier, and therefore, the subsequent confession made, would be of no effect. It is pertinent to point out that the lower Court was not prepared to accept the alleged confessional statement and the subsequent recovery, and it does not require any consideration at all. Thus, the prosecution has brought forth necessary circumstances that it was the appellant/accused who took the deceased Kanagaraj from the house of P.W.6, which was witnessed by P.W.1 and others, and he went over to Tiruvannamalai, where he was found by P.W.9 in the company of the deceased, and from Tiruvannamalai, he proceeded along with the deceased to Sathanur in the same bus, which was witnessed by P.Ws.3 and 4, and he returned alone, after murdering him. It remains to be stated that the accused has no satisfactory explanation to offer as to what happened to the deceased, who was found with him prior to the occurrence; but, he has given a falsehood that the deceased had gone to the native place. In the instant case, it can be stated that the prosecution brought forth necessary circumstances pointing to the guilt of the accused, which have been rightly relied on by the lower Court in finding him guilty as per the charge levelled against him. Therefore, this Court is unable to see any merit in the contentions put forth by the learned

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Counsel for the appellant. There is nothing to interfere in the judgment of conviction and sentence passed by the lower Court, and accordingly, it is sustained.

15. In the result, this criminal appeal is dismissed. It is reported that the appellant is on bail. Hence, the learned Sessions Judge will take steps to commit him to prison to undergo the remaining period of sentence.

16-6-2005

nsv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Additional District Judge cum Chief Judicial Magistrate, Tiruvannamalai

2.-do- Through The District Judge, Tiruvannamalai District.
3.The District Collector, Tiruvannamalai
4.The D.G.P., Chennai.
5.The Public Prosecutor, Madras.
6.The Superintendent, Central Prison, Vellore.
7.The Inspector of Police, Chengam Circle
8. The Chief Judicial Magistrate, Tiruvannamalai.
9. The Chief Judicial Magistrate, Nagercoil
10. The Judicial Magistrate, Chengam.
11. -do- Through The Chief Judicial Magistrate, Tiruvannamalai.

1 cc to M/s.T.S.Gopalan & Co., Advocates, SR.24285

ng (co)

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